

## **IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

**In Re Patent No.:** 6,132,432  
**Issue Date:** October 17, 2000  
**Application No.:** 09/280,283  
**Filed:** March 29, 1999  
**Attorney Docket No.:** 0123.00017

### **STATEMENT WHY MAINTENANCE FEE WAS NOT PAID TIMELY**

Delay in timely payment of the 7½-year maintenance fee was unavoidable. Reasonable care was taken to ensure that the maintenance fee would be paid timely and this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The following due care and diligent steps were taken to ensure timely payment of the maintenance fee:

1. Patent counsel, Kohn & Associates, PLLC, maintained the docket for payment of the maintenance fees, as it has done for over 20 years, and sent reminders 90, 60 and 30 days in advance of the due date to then-assignee, Spinal Innovations, LLC, via mail, email and/or facsimile communications.

2. At the time this patent was granted, October 17, 2000, Marc Richelsoph, the solely named inventor of this patent, was an officer of Spinal Innovations, LLC.

3. The first maintenance fee, due April 17, 2004, was ordered to be paid by Marc Richelsoph as the officer of Spinal Innovations, LLC, the assignee for this patent.

4. In 2006, the business relationship dissolved between Marc Richelsoph and Spinal Innovations, LLC, whereby the patent portfolio of which this instant matter was a part, was retained by Spinal Innovations, LLC, with the right of first refusal to Marc Richelsoph should Spinal Innovations, LLC, decide not to proceed with prosecution of any pending application, or payment of any maintenance fee.

5. Subsequent to the dissolution of the partnership between Marc Richelsoph and Spinal Innovations, LLC, patent counsel remained counsel of record to Spinal Innovations, LLC, and as such, provided notices to Spinal Innovations, LLC, in the course normal business practices as related to intellectual property.

6. Spinal Innovations, LLC, had a fiduciary responsibility to Marc Richelsoph to advise Marc Richelsoph that it was not taking action to pay the 7½-year maintenance fee, but did not do so, therefore, Marc Richelsoph was not accorded his right of first refusal and had no knowledge that the maintenance fee was not to be paid.

7. Had Marc Richelsoph known of Spinal Innovations, LLC's, intention to not pay the 7½-year maintenance fee, Marc Richelsoph would have paid the same and resumed ownership of the patent as he had directed payment of the first maintenance fee, and it is his intent to pay the final maintenance fee.

8. Marc Richelsoph became aware that the 7½-year maintenance fee was not paid when he contacted counsel on April 1, 2011, to ascertain the amount due for the final 11½-year maintenance fee, and when it was due, only to learn that the patent had expired for nonpayment of the previous maintenance fee, and instructed legal counsel to file this instant Petition.

9. To avoid conflict of interest, the undersigned legal counsel had to take steps to ensure filing this Petition on behalf of Marc Richelsoph would not pose legal issues between legal counsel and Spinal Innovations, LLC, or legal issues between Marc Richelsoph and Spinal Innovations, LLC, as a result of this legal counsel's filing this Petition.

As a point of clarification, Petitioner for the instant matter is Marc Richelsoph of Intelligent Implant Systems, LLC, and represents Intelligent Implant Systems, LLC, in this matter. Spinal Innovations has recently assigned its rights to Marc Richelsoph to pursue this Petition.

Petitioner requests that the delayed payment of the maintenance fee be accepted and the patent reinstated. The Commissioner is hereby authorized to charge Deposit Account No. 11-1449 for fees in connection with this Petition and the 7½-year maintenance fee.

Respectfully submitted

KOHN & ASSOCIATES, PLLC

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Dated: July 19, 2011

**CERTIFICATE OF ELECTRONIC FILING VIA EFS-WEB**

Date of Electronic Filing: July 20, 2011

I hereby certify that this correspondence is being Electronically filed with the United States Patent & Trademark Office on the above date.

/Sheryl M. Fox/

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